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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th day of June 1998.

Before

THE HON'BLE MR. JUSTICE KUMAR RAJARATNAM

WRIT PETITION No. 15355 OF 1998.

Between:

Fakeergouda
S/o Linganagouda Doddagoudar,
aged about 55 years, Occu:
Agriculturist, and elected
Director of Byadgi Taluk
Agricultural produce Market-
ing Society, Byadgi, District
Haveri.

5/6
.. Petitioner.

(By Sri Mohan Shantanagoudar, Advocate)

And:

1. State of Karnataka rep.by
its Secretary, Department of
Co-operation, M.S.Buildings
Bangalore-1.
2. Assistant Registrar of Co-
operative Societies, Haveri.
3. Secretary, Byadgi Taluk
Agricultural Produce Market-
ing Society, Byadgi, Dist.Haveri.
4. S.B. Basanagoudar, Major, Occu:
Advocate & Agriculture R/o
Hirehalli.
5. S.N. Mathanavar, Major, Occ:
Agriculture R/o Kurdakodihalli.
6. Neharu Channabasappa Olekar
Major, Occ: Agriculture R/o Sidenur. Respondents.

(By Sri B. Veerappa, HCGP for R-1 & 2)

(By Sri L.T.Natarajan & Sri Jayakumar S.
Patil, Advocates for R-5.

(By Sri F.V.Patil Advocate for R-3.
R-4 and 6 served.

This writ petition is filed under Articles 226 & 227 of the Constitution of India praying to quash Annexure D' dated 21-5-1998 by R-1 prohibit the respondents 4 to 6 from acting as nominated directors of third respondent-society.

This writ petition is coming on for orders this day, the Court made the following:

O R D E R.

1. Issue Rule.

The writ petition is taken up with the consent of parties.

2. The petitioner was elected as a director of the third respondent-society. The third respondent-society had a Government share capital of Rs.6,68,000/-. The society has also borrowed a loan from the Government to the extent of Rs.39,000/-. Since the State Government has subscribed to the share capital, the State Government nominated three directors to the society by its order dated 21-5-1998 in accordance with section 29 of the Karnataka Co-operative Societies Act (hereinafter referred to as the 'Act').

3. Section 29 of the Act gives power to the Government to nominate its nominee on the Committee of the Co-operative Society if the Government has subscribed to the share capital of the society.

In this case, when the State Government nominated as directors respondents 4 to 6 by its order dated 21-5-1998, it is not in dispute that the Government had subscribed to the share capital of the society. Therefore, the respondents 4 to 6 were validly nominated to the Committee of the Co-operative Society by the State Government. This is one aspect of the matter.

4. It was the second aspect of the case which has caused the controversy.

5. It was contended by the petitioner that the society has repaid the entire share capital of Rs.6,68,000/- on 25-5-1998. The society also contended that the loan amount of Rs.39,000/- was also repaid on 25-5-1998. A resolution was also passed by the Board of Directors on 29-4-1998 resolving that the society repay the entire share capital. Pursuant to this resolution the share capital was repaid on 25-5-1998.

6. Annexure 'C' is the certificate issued by the Asst. Registrar of Co-operative Society, Haveri- the second respondent herein. The English translation of Annexure C' which is dated 25-5-1998 reads as follows:

" S.No.16/Yojane/CR 76/98-99

Office of the Asst.
Registrar of Co-operative
Societies, Haveri,
dated : 25-5-1998.

CERTIFICATE.

It is certified herewith that there are no dues from the Bydagi taluk Agricultural Produce Marketing Co-operative Society Ltd., Bydagi to be recovered from the said society either the Government share amount or the loans.

Sd/- xx "

Annexures A,A-1,A-2 and B are copies of the treasury challans to show that the monies were paid in the treasury.

7. According to the learned counsel for the petitioner the amounts were paid by the society pursuant to a resolution passed by the board of directors and a certificate was also obtained from the second respondent to the effect that the entire amount of the share capital has been returned to the State Government. Therefore, it was submitted that the continuation of respondents 4 to 6 as Government nominees beyond 25-5-1998 is in violation of Section 29 of the Act.

8. The only question that arises for consideration in this writ petition is whether the society unilaterally returned the share capital as was contended by the respondents and whether it was ^{or} _^ ruse to incapacitate the respondents 4 to 6 from functioning as nominated directors.

9. If it was a unilateral return of the share capital by the society, then the Court will have no hesitation in holding that there was no demand by the State Government and the return of the share capital was done only to prevent the respondents 4 to 6 from functioning as Government nominees.

9. For the sake of convenience it would be better if I refer to the submissions of the learned counsel for the respondents 4 to 6 (nominated directors) first before I deal with the contentions of the learned counsel for the petitioner.

10. It was firstly submitted by Mr. Jayakumar S. Patil, learned counsel for the respondent -5 that the resolution passed by the society is under a cloud since it was included at the end of the agenda as item 6(a). It was further submitted that this resolution was not ratified by the General Body.

11. The second submission was that the Assistant Registrar has no authority to give a certificate on behalf of the State Government stating that the share capital of the Government was returned by the society (Annexure C').

12. The third submission was that the return of the share capital by the society was unilateral and there was no demand by the State Government for return of the share capital.

13. The first submission of Mr. Jayakumar S. Patil should not detain us for long. It is not open to this Court to go behind a validly passed resolution while exercising powers under Section 226 of the Constitution of India. I have perused the copy of the resolution. It appears to me to be in order on the face of it.

14. The second submission of the learned counsel Mr. Jayakumar S. Patil was that the Assistant Registrar had no authority to give a certificate on behalf of the State Government. This requires some thought.

15. Mr. Jayakumar S. Patil has relied on a Notification No. CMW 243 CLM 91 Bangalore dated 4-5-1994 issued by the Government under Section 2A sub section (1) of the Act wherein it was submitted that all the Co-operative Societies whose areas of operation

extends to a Taluk the Deputy Registrar is the competent authority and not the Assistant Registrar.

16. In other words it was submitted that Circular dated 4-5-1994 does not confer any authority on the Assistant Registrar to give a certificate. However, on a perusal of the Notification relied on by Mr. Patil section 29 is not dealt with. The other sections which are not relevant ^{to} in this case has been dealt with under this heading and therefore is no assistance to the respondent.

17. We must therefore fall back on the definition of the Registrar in ^{section 2} e(2)(i) of the Act. ^{section 2} e(2) (i) of the Act define Registrar as a person including Additional Registrar, Deputy Registrar and an Assistant Registrar. Therefore, it cannot be said that an Assistant Registrar cannot give a certificate on behalf of the Registrar.

18. In this case Annexure C' was given by the Assistant Registrar and such a certificate cannot be brushed-aside easily. In fact the first objection filed on behalf of the State Government was by the Assistant Registrar of Co-operative Societies. This was curiously the same officer who passed Annexure 'C'.

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19. Realising the faux-pas a better affidavit was sought to be filed on behalf of the Government by the Under Secretary to the Government Department of Co-operation, which did not advance the case to the Government any further.

20. The stand of the State Government was that there was no demand from the Government to return the share capital and that the society unilaterally credited the amount. It was also stated that the certificate issued as per Annexure 'C' was without jurisdiction and without prior permission.

21. Mr. B.Veerappa, the learned High Court Government Pleader submitted on behalf of the first and second respondents that the proper authority to demand the return of the share capital is the Government and the Government alone. Therefore, he submitted that the certificate given by the Assistant Registrar is not binding on the Government.

22. Let us now advert to the submissions of the learned counsel for the petitioner. The crux of his argument is that the share capital was returned by the society on account of the heavy pressure placed by the State Government on the society. It is because of the demand made by the Government, the society was obliged to pass a resolution to return the share capital. If the return of the share capital has been unilateral by the society, then certainly that will not be binding on the State Government. Mr. Mohan Shanthanagowda, the learned counsel for the petitioner does not subscribe to the submission that if the share capital is returned unilaterally, it will still be binding on the Government.

23. The learned counsel for the petitioner drew my attention to Annexure-F. Annexure-F is the communication issued by the Joint Registrar of Co-operative Societies to the petitioner-society. At Annexure-F the Joint Registrar has clearly spelt out what should be done with regard to the share capital of the Government.

Let me quote the last two paragraphs in toto :-

"It is informed in the reference letter that the Hon'ble Co-Operative Minister has directed to recover back the Governments' share capital amount from such of the T.A.P.C.M. societies that have failed to collect the share capital amount parelled to the share capital amount of the Government. Therefore you are directed to collect the share capital amount from your society's members immediately.

The Government have decided to withdraw their share capital amount from such of the T.A.P.M.C. Societies that have failed to collect the share capital of their members parelled to the Government's Share Capital before 31.3.1998. Hence you are informed to collect the share capital amount from the members of T.A.P.C.M. Society parellel to the Government's share capital without giving scope to withdraw the share capital as per the Government decision."

There is some dispute as to the exact translation of Annexure-F. It was submitted by the learned Government Pleader that what was meant in Annexure-F was that the society should not give room for action being taken for the withdrawl of share capital if the society is not able to mobilise their own share capital equal to share capital of the Government on or before 31.3.1998.

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24. Reliance was also placed by the petitioner on Annexure-G. Annexure-G is also a communication addressed to the petitioner-society by the Deputy Registrar. Annexure-G is more emphatic. The relevant portion of Annexure-G (English translation) reads as follows :-

"In addition, it is also noticed that the TAPCM societies are not at all making any efforts to collect the share amounts from their members and that the TAPCM societies depending only on the Government share capital cannot be strong at all.

The Hon'ble Co-Operative Minister has directed to withdraw the share capital from such of the T.A.P.C.M. societies that have not collected the share capital amount from their members parallel to the Governments' share capital amount. Therefore it is directed to take active interest to collect the share amount compulsorily from the members and to initiate suitable action before 31.3.1998 to achieve the goal in the matter.

This subject will be noticed specifically in every monthly meeting and the progress will be watched.

It is informed that the action will be taken to withdraw Government share capital from such of the T.A.P.C.M. Societies that have failed to collect the share amount from members in parellel to the share amount of the Government before 31.3.1998. It is noticed with dissatisfaction that no interest is taken so far inspite of the direction (Ref No.1) given in the matter."

These two communications clearly indicate the stress suffered by the society from the respondents to the effect that if the society was not able to mobilise the equivalent amount of share capital on their own, the share capital invested by the Government shall be withdrawn. As far as this society is concerned the society was not able to mobilise the required share capital from its own members on or before 31.3.1998.

25. In the background of such a situation, a resolution was passed by the Board of Directors at Annexure-J. The English translation of Annexure-J reads as follows :-

"The Byadgi Taluka Agricultural Produce Co-operative Marketing Society Ltd Byadgi.

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Place - The office of the Byadgi Taluka Agricultural Produce Co-Operative Marketing Society Ltd., Byadgi

Date time 29.4.1998 Wednesday 1-00 P.M.

Number of directors present 13

| | |
|---|--|
| Subject of Returning the share amount of the Government | Resolution No.6(a) Resolved to return the full share amount and the loan amount to the Government unanimously as per the direction of the Deputy Registrar made in the monthly meeting and as it is not possible to collect the share amount parallel to the full share amount of Government. |
|---|--|

Proposer -- Shri F.L.Doddagoudar
of Shidenur

Seconder -- Shri F.B.Patil of Tadas.

The meeting dissolved after the transaction of the society.

Sd/-
(S.S.Hosagoudar)
Manager

Sd/-
(B.M.Malanevar)
Chairman."

26. Reading of Annexures-F, G and J makes it abundently clear that the society acted on the demand made by the State Government. On a perusal of the notification it is clear that there was a direction by the State Government directing the society to mobilise share capital equivalent to the share of the Government and

if the society was not able to mobilise the share capital action was to be taken against the society by seeking return of its share capital. It is not known what action would have been taken if the share capital was not returned to the Government.

27. It was submitted by Mr. Mohan Shanthanagoudar that all kinds of action could have taken if the share capital was not returned. Emergency measures under Section 30-A could have used or a show cause notice could have served under Section 30(1) to the Society. It is under these circumstances, the learned counsel for the petitioner submitted that a resolution was passed making reference to the demand made by the Government to return the share capital of the society. It was also submitted by the learned counsel for the petitioner that a certificate was issued at Annexure-C by the Assistant Registrar to the effect that the share capital invested in the society has been recovered from the society along with the loans.

28. The learned Government Pleader submitted that the Assistant Registrar ^{who} gave the certificate Annexure-C was not competent to do so in view of the circular at Annexure-R-2. Annexure-R-2 is the circular where a direction was given by

the State Government to return such monies which were paid in the Treasury unilaterally.

29. In this case, we have to rely on Annexures F and G and in that context Annexure-C given by the Assistant Registrar assumes importance. It cannot be stated as was argued by Mr. Veerappa that Annexures F and G are only suggestive and not a demand by the State Government. We must take into account that Annexure-C was issued by the Assistant Registrar who was a responsible officer. Annexure-C cannot be read in isolation of Annexures F and G. Annexures F and G indicate that drastic action will be taken by the Government for ^{retrieving} ~~retrieving~~ the share capital.

30. If we take into account the cumulative background of the facts of the case, it cannot be ruled out that there was a threat looming large over the head of the society requiring the society to return the share capital if they do not mobilise resources of their own.

31. If Annexures F, G, J and C are to be read harmoniously, it certainly gives the impression

that there was a demand for return of the share capital. It cannot be said that the share capital was returned unilaterally by the society and that there was no demand by the State Government.

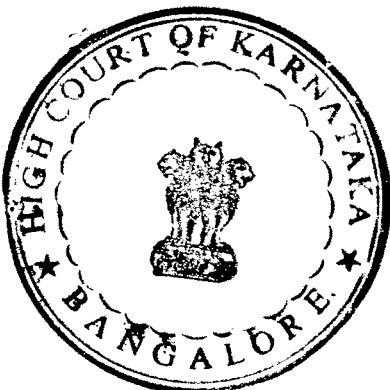
32. The learned counsel for the respondent relied on an unreported Judgment of this Court in W.P. No.3658/1995 dated 27th October, 1997. In this case the share capital was admittedly refunded by the society. However, the Court held that there was no demand by the State Government and therefore returned the share capital in the facts and circumstances of the case ^{held it} was unilateral. In that view of the matter the learned Judge in that writ petition directed to make a representation to the State Government and take orders from the State Government.

33. This case is different since reliance is placed on Annexures F, G and E to show that there was a demand and pursuant to the demand by the State Government Annexure-E was issued. Therefore, the Judgment relied on by the learned counsel for the respondents may not have any application to the facts of this case.

34. It was lastly submitted by the learned counsel for the respondents that a representation is already pending before the State Government seeking that the State Government should withdraw the nomination of the Government Directors and it is at best left to the Government to decide the matter one way or the other in accordance with law.

35. In this case, admittedly, the State has taken ^{before this court} a categorical stand that there was no demand for refund of the share capital and that the nominated directors are continuing in office validly by virtue of Section 29 of the Act. Therefore, no useful purpose would be served by remitting the matter back to the State Government.

36. Consequently there will be a writ of mandamus forbearing the respondents 4 to 6 from functioning as nominated directors of the Byadgi Taluk Agricultural Produce Marketing Society, Byadgi with effect from 25.5.1998 notwithstanding the fact that they were validly nominated on 21.5.1998. Accordingly the writ petition is allowed. Rule made absolute. No order as to costs.



Ads/SJ

Sd/-
JUDGE